No. 84-544

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ALEXANDER L. STEVAS,
CLERK

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1984

ASSOCIATION OF CALIFORNIA WATER AGENCIES, et al.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONERS' REPLY BRIEF TO BRIEF FOR THE UNITED STATES IN OPPOSITION

(Supreme Court Rules, Rule 22.5)

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THE UNITED STATES HAS ERRONEOUSLY CHARACTERIZED THE STATE COURT'S INTERPRETATION OF STATE LAW AS "DICTUM"

In its brief in opposition to the petitions for a writ of certiorari the United States has misrepresented Sacramento County Superior Court Judge Fred W. Marler, Jr.'s declaration of state law as mere "dictum," when in fact it was the decision in the case. In its brief, the United States has virtually paraphrased the language which was used by the Department of the Interior's attorneys in 1980 and 1981, in their perfunctory reports to the Secretary of the Interior on the effect of the state court's ruling. (Br. for the U.S. in Opp., p. 5.) The Department's attorneys' advice to the Secretary that Judge Marler's decision was mere dictum, may well have been the cause of the Secretary's erroneous interpretation of State law. The United States' brief should not mislead this Court

in the same manner as the Secretary was misled.

Petitioners Association of California Water Agencies, et al., sued Governor Brown in the California Superior Court seeking both declaratory and injunctive relief. While Judge Marler denied the injunction, he issued a decision and judgment declaring the California law. In his Memorandum Decision, Judge Marler stated:

> The conclusion the Court reaches as to the statutory construction of California law is that the present state of law and fact in California is such that the Secretary of Resources cannot guarantee to "permanently administer" the five rivers designated by statute.
>
> * * *
>
> While the Governor claims that the California Act confers permanent administration authority over the System to the Resources Secretary, this Court can apply its own interpretation of the Act. Having done so, it is then the province of the Secretary of the Interior to find in accordance with the Court's interpretations of the California Act whether federal requirements for inclusion of

> these rivers in the national system have been met.

(Appx. to Ptn. for Writ of Certiorari, pp. A-186, A-187.)

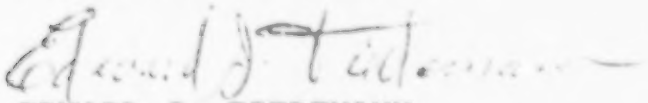
A state court's interpretations of state law in a declaratory relief action cannot properly be characterized as "dictum." When his attorneys told him that the State Court's interpretation of State law was mere dictum, the Secretary of the Interior was misguided, which is probably why the District Court judge determined o send this matter back to the Secretary for reconsideration.

We ask that this Court not succumb to the same erroneous mischaracterization of Judge Marler's decision as "dictum."

Dated: January 3, 1985.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I, CONNIE M. BECKES, declare as follows:

I am a citizen of the United States and am employed in the County of Sacramento, State of California, where the mailing described herein occurred. I am over the age of eighteen and not a party to this action. My business address is 770 L Street, Suite 1200, Sacramento, CA 95814-3363.

On January 3, 1985, I served by mail a copy of the foregoing document by placing three copies thereof in sealed envelopes with first-class postage fully prepaid in the United States Post Office mail box at Sacramento, California, addressed as follows:

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Executed on January 3, 1985, at Sacramento, California. I declare under penalty of perjury that the foregoing is true and correct.

Connie M. Beckes
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